

State of California  
BOARD OF EQUALIZATION  
SALES AND USE TAX REGULATIONS

**Regulation 1598. MOTOR VEHICLE AND AIRCRAFT FUELS.**

*Reference:* Sections 6011, 6012, 6245.5, 6357, 6357.5, 6385 and 6423, Revenue and Taxation Code.

**(a) IN GENERAL.** Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

**(b) EXCEPTIONS.**

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (g) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

**(c) MEASURE OF TAX**

(1) The measure of tax includes:

**(A)** The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

**(B)** The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

**(C)** The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

**(A)** The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.
4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.
5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

**(B)** The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

**(C)** The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.
2. Jet fuel used as a fuel in noncommercial aircraft.
3. Diesel fuel.
4. Special motor fuels.

**(D)** Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (h) for requirements for supporting claimed exclusions.)

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(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Sections 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (h) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (i).

**(d) SALES OF MOTOR VEHICLE FUEL ON SALES TAX-INCLUDED BASIS.** Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

*"The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill."*

Following are examples of prices computed on a tax-included basis:

<b>(A)</b> Sales price per gallon of gasoline net of all taxes	\$1.153
Federal excise tax*	.184
State excise tax*	.180
Total	\$1.517
* Sales tax reimbursement computed at 7¼%* of \$1.517	.110
Total tax-included price per gallon	\$1.627
<b>(B)</b> Sales price per gallon of diesel fuel net of all taxes	\$1.103
Federal excise tax*	.244
Total	\$1.347
* Sales tax reimbursement computed at 7¼%* of \$1.347	.098
State excise tax*	.180
Total tax-included price per gallon	\$1.625

\*The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

**(e) APPLICATION OF SALES OR USE TAX TO FUEL FURNISHED WITH LEASED VEHICLES OR AIRCRAFT.** The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called "wet rentals"). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value" does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

**(f) REFUNDS OF EXCISE TAX.**

(1) Federal Excise Taxes. The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax

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measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

**(g) SUPPORTING DATA FOR AIRCRAFT FUEL EXEMPTIONS.** Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (g)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

**Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft**

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from \_\_\_\_\_,

will be used in propelling aircraft; and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser: \_\_\_\_\_  
(Company Name)

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Authorized Agent)

Title: \_\_\_\_\_  
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): \_\_\_\_\_

**Identification Numbers of Aircraft Owned or Operated**

_____	_____
_____	_____
_____	_____
_____	_____

**(h) CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX.** Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (h)(1).

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(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

**Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes**

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

\_\_\_\_\_

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: \_\_\_\_\_  
(Company Name)

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Authorized Agent)

Title: \_\_\_\_\_  
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): \_\_\_\_\_

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (h)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

**(i) ALTERNATE CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX.**

On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (i)(1) may issue a certificate in substantially the form set forth in subdivision (i)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (i) if satisfying all the following requirements:

**(A)** The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

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(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

**Revenue and Taxation Code Section 6245.5 Certificate for the  
Exclusion of Sales and Use Tax on Federal Excise Taxes**

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.
2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.
3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period in which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: \_\_\_\_\_  
(Company Name)

Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Authorized Agent)

Phone Number: \_\_\_\_\_

Title: \_\_\_\_\_  
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No.: \_\_\_\_\_

*History:* Amended and adopted December 8, 1970, as a restatement of Ruling 1325 (Use Fuel Tax Law), effective January 15, 1971.

Amended June 9, 1972, effective July 15, 1972.

Amended July 31, 1972, effective August 2, 1972.

Amended September 14, 1972, effective September 15, 1972.

Amended January 18, 1973, effective January 26, 1973.

Amended May 9, 1973, effective June 17, 1973.

Amended November 19, 1975, effective January 1, 1976. Deleted (b)(2) due to expiration of Section 6357 of the Revenue and Taxation Code, amended (c)(2)(A) to reflect the annual flat rate fuel tax authorized by Section 8651.7 of the Revenue and Taxation Code, and amended (d) to reflect increased tax rate and prices.

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Amended June 22, 1976, effective July 25, 1976. Added Santa Clara County Transit District transactions and use tax.

Amended December 7, 1978, effective January 28, 1979. Amends subsection (f)(1); deletes section (d)(2) and amends subsection (d) to establish the presumption that sales tax will be considered included in the price per gallon of gasoline or diesel fuel sold if proper notice is posted.

Amended April 2, 1981, effective August 19, 1981. In (b) added last sentence re "gasohol." Added (e) "Partial Exemption of Gasohol." Relettered remaining subsections. Added section 6357.5 to references.

Amended July 28, 1982, effective December 8, 1982. Deleted (e)(1)(D), gasohol color requirement; added the last sentence of (e)(2)(C), referring to Los Angeles and San Mateo transit taxes; and made various technical changes.

Amended July 27, 1983, effective November 13, 1983. Amended subdivision (c) to reflect current tax rates; deleted listing of transit districts imposing the 1/2 of 1 percent transit tax.

Amended March 27, 1984, effective April 24, 1984. In subsection (c)(2)(B)1 changed number 12 to 3.

Amended May 1, 1985, effective May 31, 1985. Subdivision (b), has deleted from its reference to the partial gasohol exemption which existed and expired December 31, 1983. Subdivision (c) specifies how the sales tax applies to various state and federal taxes on fuel based on tax rates in effect as of October 1, 1984. Subdivision (e), has been deleted in its entirety. Subdivisions (f), (g), and (h), have been renumbered to (e), (f), and (g), respectively.

Amended April 30, 1990, effective July 7, 1990. Added paragraphs (b)(2) and (b)(3) to clarify the two exceptions to the application of the sales and use tax to the sale of aircraft fuel to air common carriers under certain circumstances and added reference to Regulation 1621. Added paragraph (c)(1)(A) to explain measure of tax includes federal excise taxes on diesel and jet fuel, except as provided in (c)(2)(C) which was added to identify the exclusion of federal importer's or producer's excise tax for which a certification is obtained that a credit or refund is due against income tax from the measure of the sales and use tax. Added paragraph (h) to assist in preparation of the certificate for claiming the exemption.

Amended August 1, 1991, effective August 29, 1991. Amended pursuant to Chapter 85, Statutes of 1991, and Chapter 88, Statutes of 1991, to provide for repeal of the exemption from sales tax for the sale of aircraft fuel to air common carriers for immediate shipment outside California consumed by the common carrier in the conduct of its business after reaching the first out-of-state destination. Chapter 85, Stats 1991, repeal the exemption effective July 1, 1991; Chapter 88, Stats 1991, changed the effective date to July 15, 1991.

Amended June 23, 1993, effective October 13, 1993. Added paragraph (b)(2) to provide that sales tax does not apply to certain manufacturers' or importers' federal excise tax imposed under Section 4091 of the Internal Revenue Code. Amended paragraph (b)(2) to extend the exemption from the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose first destination is a foreign destination to similarly sold fuel for immediate consumption or shipment on a flight whose final destination is a point outside the United States. Amended paragraph (f) to explain refund procedures with regard to manufacturer's excise tax which has been refunded and added paragraph (b)(1)(B) to clarify the refund procedures for federal importer's or producer's excise tax which has been refunded or credited by the federal government.

Amended January 10, 1996, effective March 28, 1996. Added new subdivision (c)(2)(B) and renumbered the following sub-subdivisions of subdivision (c)(2); amended new subdivision (c)(2)(D); added new subdivision (c)(2)(E); and deleted subdivision (f)(1)(A) and denominated former subdivision (f)(1)(B) as subdivision (f)(1). Deleted gender-based language from subdivision (e) and corrected clerical errors in subdivisions (c)(1)(B), (d), (e), and (h).

Amended June 14, 1996, effective August 23, 1996. Corrected the California Code of Regulations as amended effective March 28, 1996 to add subdivision (c)(2)(E).

Amended August 1, 2001, effective December 1, 2001. Word "subparagraph" changed to "subdivision" throughout. Phrase "importer's or producer's" before word "excise" deleted throughout. Subdivision (c)(2): (E) word "and" changed to "or"; (F) added. Subdivision (f): (1) phrase "which included that federal excise tax" deleted; words "OR USE" added to title of (2). Subdivision (g)(2)—last sentence added. Exemption Certificate—new first unnumbered paragraph added; second unnumbered paragraph—words "aircraft fuel (gasoline)" replaced with "motor vehicle fuel"; phrase "and . . . Law" deleted and phrase "and . . . refund" added; third unnumbered paragraph—words "Motor vehicle" added and "(gasoline)" deleted; fourth unnumbered paragraph—certificate format changed for ease of use. Subdivision (h)(1)—last sentence added. Exemption Certificate—new title and new first unnumbered paragraph; third unnumbered paragraph—last sentence added; format of certificate rewritten for clarity. New subdivision (i) added.

*Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.*